



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

as fatal to its adequacy.¹³ Although settling the whole matter necessitates giving a judgment in the nature of ouster against the incumbent,¹⁴ this is open to no substantial objection if all the parties interested have had a chance to be heard.¹⁵

Some authorities have refused to issue the writ of *mandamus* for offices at will;¹⁶ and, indeed, the reasons for refusing *quo warranto* apply equally to *mandamus*. It is consequently curious that the court in the principal case found refuge in *mandamus*, but as all the parties had been in court and the election of a person other than the incumbent would amount to his amotion, the remedy was proper and effective.¹⁷ Courts should have a wide field of discretion over the extraordinary legal remedies, and it is unfortunate that artificial rules have so often deprived them of jurisdiction.¹⁸

THE NATURE OF THE RIGHT IN A DEAD BODY. — The common law of England recognizes no property rights in a dead body.¹ Thus, while to steal the coffin or winding sheet of the dead is larceny, it is not so to steal the corpse itself.² And there are indications that even the relatives' right to possession of the corpse for purposes of burial has not always been adequately protected.³ In England, however, all questions relative to the disposition of dead bodies were under ecclesiastical law,⁴ hence English cases are not very helpful in a country having no ecclesiastical courts, for there rights in dead bodies must be protected, if at all, by civil remedies.⁵ The legal duty of the surviving spouse or next of kin to bury the deceased predicates a legal right to do so, and it is well established in our law that an action lies for wrongfully detaining a corpse awaiting burial,⁶ or for mutilation of it by unauthorized autopsy,⁷ or otherwise.⁸ Moreover, the legal right being recognized, courts of equity will act where the remedy at law is inadequate. For example, whether or not a corpse be regarded as becoming on interment a part of the soil in which it lies,⁹ equitable remedies alone can properly protect whatever rights exist in it thereafter.¹⁰

¹³ See *Luce v. Board of Examiners*, 153 Mass. 108, 110; *Lawrence v. Hanley*, *supra*, 403.

¹⁴ See *The Queen v. Hertford College*, 2 Q. B. D. 590, 605; *Keough v. Holyoke*, *supra*, 408.

¹⁵ See *Brown v. Bragunier*, 79 Md. 234, 242; *Harwood v. Marshall*, *supra*, 100.

¹⁶ *Rex v. Wheeler*, 3 Keb. 360; *The State v. Champlin*, 2 Bailey's Law (S. C.) 220. See *SHORTT, CRIMINAL INFORMATIONS*, 275.

¹⁷ *Accord*, *In re Barlow*, 30 L. J. Q. B. 271; *Regina v. Strabane Urban Dist.*, 35 Ir. L. T. Rep. 12.

¹⁸ See *In re Barlow*, *supra*, 271.

¹ See 3 COKE'S INSTITUTES, 203; 2 BL. COMM. 429; *Regina v. Sharpe*, 7 Cox C. C. 214.

² *Haynes's Case*, 12 Coke 113.

³ See 9 SOL. J. 3, describing instances in which corpses had been successfully withheld from the relatives for purposes of blackmail.

⁴ Cf. *Kemp v. Wickes*, 3 Phillim. 264.

⁵ See *Law of Burial*, 4 Bradf. Surr. (N. Y.) 503.

⁶ *Renihan v. Wright*, 125 Ind. 536.

⁷ *Koerber v. Patek*, 123 Wis. 453; *Burney v. Children's Hospital*, 169 Mass. 57.

⁸ *Hockenhammer v. Lexington & Eastern R. Co.*, 24 Ky. L. Rep. 2383; *Louisville & Nashville R. Co. v. Wilson*, 123 Ga. 62.

⁹ *Meagher v. Driscoll*, 99 Mass. 281.

¹⁰ *Pierce v. Proprietors of Swan Point Cemetery*, 10 R. I. 227; *Wilson v. Read*, 74 N. H. 322.

The right in the corpse has usually been defined as a right to "custody and possession," or as a "quasi-property right."¹¹ A recent Canadian case, however, goes further and bases its decision on the ground that the nearest relatives have a property right, limited to such exercise as shall conform to the duty out of which the rights arise. *Miner v. Canadian Pacific R. Co.*, 15 West. L. Rep. 161. And a late case in this country employs similar language.¹² The fact that a corpse is a physical thing and that the control of the nearest relative over it is exclusive¹³ predicates a right of property in the broadest use of that term.¹⁴ The principal case, however, recognizes that it would outrage decency and sentiments of reverence for the dead to regard that property right as absolute in its powers of disposition and transfer. An early *dictum* which did not so qualify it¹⁵ has been justly criticized as commercial,¹⁶ and most courts have preferred to speak only of a right of possession. Some considerations, however, indicate that it may be more accurate to regard a corpse as property subject to restrictions on its use. It is proper that a dead body should be the subject of larceny, and there is no reason, apart from the unwillingness of courts to use the word "property" in this connection, why it should not be so regarded. Moreover the restrictions upon the use of corpses as property vary in certain cases. In most states statutes provide for furnishing to medical institutions for purposes of dissection the bodies of executed felons and of those whose burial would be a public charge.¹⁷ Cadavers so acquired are obviously property in a much less restricted sense than bodies merely awaiting burial. Perhaps even less restricted is the control of corpses or parts thereof which are preserved for purposes of exhibition, such as monstrosities, skeletons, or mummies.¹⁸ Dead bodies in these forms are popularly regarded as property, because the reason for restricting the disposition of them has largely disappeared; and it would seem more consistent to regard every corpse as subject to property rights more or less limited according to the particular circumstances of its acquisition.

RECENT CASES.

ADVERSE POSSESSION — WHO MAY GAIN TITLE — WIFE AGAINST HUSBAND. — A husband on deserting his wife had given her an invalid deed to certain land. After occupying for the statutory period she conveyed to the plaintiff,

¹¹ *Keyes v. Konkel*, 119 Mich. 550, holding that replevin will not lie to recover a corpse.

¹² *Pettigrew v. Pettigrew*, 207 Pa. St. 313.

¹³ *Rousseau v. City of Troy*, 49 How. Pr. (N. Y.) 492, denying an action by a more distant relative.

¹⁴ See 1 SCHOULER, PERSONAL PROPERTY, 25; *Larson v. Chase*, 47 Minn. 307.

¹⁵ See *Bogert v. City of Indianapolis*, 13 Ind. 134.

¹⁶ See 10 HARV. L. REV. 51.

¹⁷ For typical statutes of this nature see 4 CONSOL. LAWS OF N. Y. (1909), Publ. Health Law, § 316; MASS. REV. LAWS (1902), 689-690; MICH. PUBLIC ACTS (1901), No. 5 (1); CODE OF TENN., § 6775.

¹⁸ *Doodeward v. Spence*, 9 N. S. W. 107, holding that detinue lies for the recovery of the body of a two-headed baby preserved in alcohol. But see an old case stated in 2 EAST P. C. 652. See 3 HALSBURY, LAWS OF ENGLAND, 405 note (r).